

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, Plaintiff, v. DESMOND JANQDHARI, Defendant.	CRIMINAL ACTION NO. 14-cr-217-1
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MEMORANDUM RE: POST-TRIAL MOTION

Baylson, J.

December 2, 2016

The Defendant, Desmond Janqdhari, was convicted by a jury of two violent crimes committed in short sequence of each other: one attempted carjacking on January 6, 2014, and the second interference with interstate commerce by armed robbery, relating to a robbery of a wireless telephone store on January 11, 2014. The evidence against Defendant was very strong consisting of testimony by a cooperating co-defendant, a confession which Defendant which gave to Philadelphia Police officers, and eyewitness identification by the victims of the carjacking, and strong circumstantial evidence as well.

After pretrial motions and evidentiary hearings, the Court ruled that Defendant's confession was admissible and also denied a motion to suppress the identification testimony of the carjacking victim.

In his post-trial motion, Defendant seeks both a judgment of acquittal and, alternatively, a new trial.

Motion for Judgment of Acquittal

The Defendant's acquittal motion makes a contention that there was insufficient evidence of a violation of the federal carjacking statute, 18 U.S.C. § 2119 under which the government must prove:

1. Defendant took or attempted to take a motor vehicle from the person or presence of another by force, violence, or intimidation;
2. Defendant intended to cause death or serious bodily injury; and
3. The motor vehicle had been previously transported, shipped, or received in interstate or foreign commerce.

The testimony of the victim was sufficient to establish the above elements and the Court's charge to the jury carefully and adequately explained, in plain English, the statutory requisites. This evidence is accurately reviewed at pages 8-10 of the Government's brief.

The second ground is that there was inadequate evidence that the firearm which Defendant carried during both offenses was not proven to be an "operable functioning" firearm. This argument ignores the testimony at trial, consisting of testimony by both the cooperating co-defendant as well as the police officer who found the abandoned gun and a ballistics expert who testified that the gun was operable.

Motion for New Trial

Aside from the previously mentioned denials of pretrial motions, the Defendant also asserts that a new trial is required because of the Court's limiting the cross-examination of the cooperating co-defendant. The co-defendant, Keith Williams, testified extensively to the commission of both crimes with the Defendant, and was aggressively cross-examined by

Defendant's counsel on his plea agreement, accusations of being promised a lenient sentence, and an extensive criminal record.

In his proffer to the government, Williams had also indicated, as was required, that he had been questioned by state law enforcement officers about a kidnapping. There was no evidence that he participated in the kidnapping, and he did not in the proffer make any admissions of guilt. The Court found that admitting any mention of a kidnapping would be confusing and that it was on a collateral point, which was not necessary for the jury to have a full picture of Williams' credibility. After hearing argument, the Court gave the following justification for the refusal.

It's my view that having considered the issue of the cross-examination of Mr. Williams about the – his proffer that he was a participant in a kidnapping, is that I should not allow that line of cross-examination for several reasons.

One, is that he has his own 5th Amendment rights, and I think he would be well entitled, if I were to allow the question, to refuse to answer on the grounds that it would incriminate him, and I – I presume that his attorney, who's here, Mr. Keenheel, would so advise him to do that. And I think that that would be confusing to the jury as to why he's testify about all these crimes, but he's refusing to testify about this one. It might lead the jury to infer that he, in fact, did participate in a kidnapping, when all he had done is made a proffer about it. He's not – he's not been charged with it; he hasn't admitted it in open court. He hasn't pled guilty; he's presumed innocent.

Second reason is that Mr. Reynolds is an able criminal defense lawyer. He's got lots of material with which to examine Mr. Williams. He's an armed career criminal. He's got lots of prior convictions. He's admitted participating in these two crimes. He's going to admit that he's charged with robbery and burglary, and he can be asked more about that, as long as he does not implicate Mr. Janqdhari.

And then the third is, I think this implicates Evidence Rule 404(b). I think this is other – another – other action wronged, that it would be very prejudicial to him as a witness. It would be prejudicial to the Government. And I think the prejudice all the way around clearly outweighs any probative value that it would have to assist the jury in assessing Mr. Williams' credibility. In other words, I don't think this defendant, Mr. Janqdhari, is prejudiced by not – by his attorney not being allowed to cross-examine Mr. Williams about the kidnapping, the alleged kidnapping.

So, Mr. Reynolds, my – the Government's objection and Mr. Keenheel's objection – well, Mr. Keenheel really didn't object, he just – he did object, but he's not a party here, but he would certainly have the right to advise his client to take the 5th Amendment.

The law is clear that the trial judge's rulings on admissibility of evidence at trial is within discretion of the trial court. In this case, the Court believed that Defendant's counsel had very abundant grounds with which to attack Williams, and that the mention of an investigation of kidnapping would have led down a path that would not necessarily lead to any further impeachment. Mr. Williams' counsel was present in the courtroom and undoubtedly would have advised Williams to assert his Fifth Amendment privileges against any questions about the kidnapping, which could be confusing to the jury. The Court at the time also relied on Rule of Evidence 404(b), as justifying the exclusion of cross-examination about the kidnapping.

Defendant has not cited any precedential case that would warrant a new trial and the government's brief cites several cases justifying the Court's limitation on the cross-examination. However, there are at least two recent decisions by the Third Circuit which affirm convictions where the Defendant asserted that the trial court unduly limited cross-examination of a cooperating co-defendant.

In *United States v. Freeman*, 763 F.3d 322 (2014), the defendant appealed from a jury verdict, claiming in part that his Sixth Amendment rights were violated by the Trial Court's limitation of cross examination of a cooperating government witness. Specifically, the District Court had limited defense counsel's questions which inquired about criminal behavior for which counsel had no independent factual basis. The Third Circuit upheld the trial court's decision to limit this overly broad line of questioning, given that defense counsel otherwise had ample opportunity to cross examine the witness in question. The Circuit stated:

Impeachment strategies have included the introduction of evidence of a prior criminal conviction of the witness or exposing a witness's motivation for testifying, "directed toward revealing possible biases, prejudices, or ulterior motives . . . as they may relate directly to issues or personalities in the case at hand.

The use of such strategies is always subject "to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation." *Id*; see also *Wright v. Vaughn*, 473 F.3d 85, 93 (3d Cir. 2006). We have established a two-part test to determine whether a judge's limitation on cross-examination violates the Confrontation Clause:

First, we must determine whether that ruling inhibited [a defendant's] effective exercise of her right to inquire into [the] witness's "motivation in testifying"; and second, if the District Court's ruling did significantly inhibit [the defendant's] exercise of that right, whether the constraints it imposed on the scope of [the] cross-examination fell within those "reasonable limits" which a trial court, in due exercise of its discretion, has authority to establish.

* * * *

Based upon our review of the record, we think it clear that Freeman's Sixth Amendment right of confrontation was not violated here. Given counsel's attempt at eliciting information based upon the witness's knowledge "in the universe," we cannot conclude that the District Court

abused its discretion in limiting that overly broad line of questioning. More importantly, the District Court did not entirely foreclose counsel's ability to cross-examine Isaac. It merely explained the basis upon which it sustained objections related to the specific line of questioning and warned counsel to be mindful of the Federal Rules. The record demonstrates that all defense counsel, including Freeman's counsel both before and after the instant objections, had ample opportunity to cross-examine Isaac. We conclude that there was no abuse of discretion here and will, therefore, reject Freeman's argument that he was not afforded his Sixth Amendment right of confrontation.

763 F.3d at 341-342 [citations omitted].

In a non-precedential case, *United States v. Washington*, 543 Fed. Appx. 171 (2013), the defendant appealed from a jury verdict, claiming, among other things, that the district court's limitation of his lawyer's cross-examination of a cooperating government witnesses violated the Confrontation Clause. The Third Circuit noted that the standard to be applied under the Confrontation Clause was whether a reasonable jury might have received a significantly different impression of the witness's credibility if counsel had been permitted to pursue the proposed line of inquiry. Applying this standard to the trial court's limitation of questioning regarding the witness's relationship with her boyfriend, the Third Circuit affirmed. In affirming the decision, the panel found persuasive that defense counsel was able to pursue several other avenues of questioning to challenge the witnesses' credibility.

Conclusion

For the above reasons, the Defendant's post-trial motions will be DENIED.

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ORDER

AND NOW this _2nd___ day of December, 2016, it is hereby **ORDERED** that the Defendant's Post-Trial Motion for Judgment of Acquittal and for a New Trial Pursuant To Rules 29 And 33, Fed.R.Crim.P. (ECF 199) is **DENIED**.

BY THE COURT:

/s/ Michael M. Baylson

**MICHAEL M. BAYLSON
United States District Court Judge**